

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SHAWN CROSS,
Plaintiff(s),

v.

SMITH'S FOOD AND DRUG,
Defendant(s).

Case No. 2:22-cv-01346-APG-NJK

REPORT AND RECOMMENDATION

On August 22, 2022, the Court ordered Plaintiff to show cause why this case should not be dismissed for lack of subject matter jurisdiction. Docket No. 3.¹ The deadline to respond was set for September 12, 2022. *Id.* Plaintiff has appeared to respond to the order to show cause by filing “exhibits” that do not on their face relate to subject matter jurisdiction. *See* Docket No. 4.

The Court has a duty to ensure that it has subject matter jurisdiction over the dispute before it, an issue it may raise at any time during the proceedings. *See, e.g.,* Fed. R. Civ. P. 12(h)(3). Federal courts are courts of limited jurisdiction and possess only that power authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). “A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). “The party asserting federal jurisdiction bears the burden of proving that the case is properly in federal court.” *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001) (*citing McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)).

Plaintiff’s complaint arises out of alleged interactions at a local grocery store. *See* Docket No. 1-1 at 6-8. These allegations do not on their face involve a federal question. The complaint

¹ The Court liberally construes the filings of *pro se* litigants. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

1 alleges that this case involves a federal question pursuant to 18 U.S.C. § 351(e). *See* Docket No.
2 1-1 at 3. That statute, however, provides for punishment for crimes committed *against certain*
3 *government officials and candidates*, *see* 18 U.S.C. § 351(a), which is not implicated by the
4 allegations in this case.² Moreover, despite being provided an opportunity to do so, Plaintiff has
5 otherwise made no showing as to how this Court has subject matter jurisdiction in this case.

6 Accordingly, the undersigned **RECOMMENDS** that this case be dismissed for lack of
7 subject matter jurisdiction.

8 Dated: September 20, 2022

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11 Nancy J. Koppe
12 United States Magistrate Judge

13 **NOTICE**

14 This report and recommendation is submitted to the United States District Judge assigned
15 to this case pursuant to 28 U.S.C. § 636(b)(1). A party who objects to this report and
16 recommendation must file a written objection supported by points and authorities within fourteen
17 days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file
18 a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951
19 F.2d 1153, 1157 (9th Cir. 1991).

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27 ² Even if the statute were somehow applicable to the circumstances alleged, federal
28 criminal statutes generally do not create private causes of action. *See, e.g., Cal. v. Sky Tag, Inc.*,
2011 WL 13223655, at *2 (C.D. Cal. Nov. 29, 2011) (collecting cases).